

# CONTD. ORDER-SHEET

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CASE NO.....

| DATE                                                 | DESCRIPTION OF ORDER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | REMARKS |
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| <b>S.A.345/2023</b><br>Date: 26.05.2023<br>Sl. No.17 | <p>Ld. Counsel Sri Arjun Sanjay is present on behalf of the S. Applicants.</p> <p>Ld. Counsel Sri Maneesh Mehrotra is present on behalf of the respondent bank.</p> <p>Ld. Counsel Sri Shreesh Kumar Dwivedi is present on behalf of the respondent no.2 i.e. M/s Zars Developers Private Limited along with Sri Pankaj Goel, Builder in person.</p> <p><b><u>I.A. No.1708/2023</u></b></p> <p>Ld. Counsel for the S. Applicants has filed this I.A. No.1708/2023 for urgent hearing of the matter.</p> <p>Grounds mentioned in I.A.No.1708/2023 is sufficient. Accordingly, prayer of Urgency Application to hear the matter is allowed. The I.A. No.1708/2023 is disposed off accordingly.</p> <p>This S.A. has been filed by the S. Applicants challenging the sale notice dated 06.04.2023, vide which the e-auction sale was fixed on 15.05.2023. The entire SARFAESI actions initiated by the respondent bank for recovery of Rs.12,44,04,538.58 plus interest and other charges.</p> <p><b>Heard on Interim Relief</b></p> <p>It is submitted by Ld. Counsel for the S. Applicants that the S. Applicants neither borrowers nor guarantors and even not mortgagors in this matter but they are the allottees of the Flats i.e. Aster A-25, Aster A-67 and Aster A-27. Further submitted that the allotment has been made by the Builder namely M/s Zars Developers Private Limited . further submitted that the allotment of flats have been done by the respondent no.2/Developer in the year 2012. Further submitted that the respondent no.2 / Developer, M/s Zars Developers Private Limited has obtained the credit facility by mortgaging the entire property over which the Flats were allotted / constructed in the year 2014. It is further submitted that around more than Rs.36.00 lacs has been paid to the respondent no.2/Developers by the S.</p> |         |

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|      | <p>Applicants against these three flats. It is further submitted that the sale notice, issued by the respondent bank on 06.04.2023 in which the encumbrances [the flats have already been allotted to the S. Applicants] is not mentioned. Further submitted that since the flats have been allotted prior to creation of mortgage and the same was not reflected in the sale notice, therefore, there is a violation of Rule 8(7)(a) of the Security Interest (Enforcement) Rules, 2002. Request is made the status quo may be granted to protect the interest of the allottees as they are innocent buyers.</p> <p>It is submitted by Ld. Counsel for the respondent bank that the respondent bank is not party to the allotment done by the developer in favour of the S. Applicants. Further submitted that the allotment letter does not create any right in favour of the S. Applicants. It is further submitted that there is no encumbrance over the property and the auction sale notice dated 06.04.2023 has been issued in accordance with the provisions of law. Further submitted that the property has already been auctioned/sold on 15.05.2023, sale certificate has already been issued and physical possession of the property has already been handed over to the auction purchaser.</p> <p>Ld. Counsel for the respondent no.2 submitted that there is an agreement to sale between the respondent no.2/Developer and the S. Applicants in the year 2012. Further submitted that the project is registered with RERA.</p> <p>Sri Pankaj Goel, Developer himself submitted that the loan has been obtained by the respondent no.2 in the year 2014 and while taking the loan from the respondent bank, the respondent no.2 has submitted a list of buyers of more than 45 persons. It is further submitted that with regard to the buyers, it has been mentioned in the O.A. by the respondent bank before the DRT, Lucknow. It is further submitted that the</p> |         |

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|      | <p>respondent no.2/developer has given OTS to the respondent bank in the year 2019 and thereafter, there are six OTS have also been given to the respondent bank and lastly the respondent bank has accepted the OTS in September, 2022. It is further submitted that permission as sought in the OTS has not been given by the respondent bank despite deposit of Rs.1.10 Crore. However, the respondent no.2 is ready to deposit the money as per OTS.</p> <p><b>I have considered the rival contentions of Ld. Counsel for the parties and also gone through the record.</b></p> <p>On perusal of records, it appears that the flats have been allotted to the S. Applicants by the builder / respondent no.2 by executing agreement to sale in the year 2012 and the S. Applicants have deposited some amount with the builder. Further, the loan was granted by the respondent bank in favour of respondent no.2 in the year 2014. Further there is a grouse raised by Ld. Counsel for the S. Applicants that encumbrances is not mentioned in the sale notice dated 06.4.2023 as the flats have already been allotted to the S. Applicants and the same have been allotted prior to creation of mortgage and the same is also not reflected in the sale notice which is clear cut violation of Rule 8(7)(a) of the Security Interest (Enforcement) Rules, 2002.</p> <p>On perusal of sale notice dated 06.04.2023, it appears that there is no mentioning of encumbrances over the property in question. Further, as per Ld. Counsel for the respondent bank that the physical possession of the property has already been given to the auction purchaser but on the other hand, he is submitted that the property in question is in under construction creates doubt that whether the property in question has been handed over to the auction purchaser or not?</p> <p>Further, as per respondent no.2, the physical possession of the flats have not been handed over to the auction purchasers.</p> |         |

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|      | <p>From the above facts and circumstances and on perusal of sale notice dated 06.04.2023, the encumbrances have not been mentioned in the sale notice dated 06.04.2023 which is violation of Rule 8(7)(a) of the Security Interest (Enforcement) Rules, 2002. Therefore, this Tribunal is of the view that prima facie case exists in favour of the S. Applicants. Accordingly, all the parties are hereby directed to maintain status quo till further orders.</p> <p>Respondents are directed to file reply on or before next date fixed under copy to Ld. Counsel for the S. Applicants.</p> <p>Ld. Counsel for the S. Applicants is also directed to file impleadment application to implead the auction by the next date fixed.</p> <p>Further, the S. Applicants are free to approach the respondent bank for settling the matter.</p> <p>Case is adjourned.</p> <p>List the matter on 13.07.2023 before Ld. Registrar for compliance.</p> <p style="text-align: right;"><b>(R.M. Kushawaha)</b><br/><b>Presiding Officer</b></p> |         |